

NOTICE OF FAIRNESS HEARING  
BEFORE THE  
DEPARTMENT OF CORPORATIONS  
OF THE  
STATE OF CALIFORNIA

In the Matter of the Application of

FIRST AVENUE NETWORKS, INC.,  
a Delaware Corporation,  
for a Permit Authorizing the Sale and Issuance of  
Securities pursuant to Section 25121 of the  
Corporate Securities Laws of 1968, as amended

NOTICE OF HEARING  
PURSUANT TO SECTION 25142  
OF THE CALIFORNIA  
CORPORATIONS CODE

TO: SHAREHOLDERS OF FIBERTOWER CORPORATION:

NOTICE IS HEREBY GIVEN that on August 15, 2006, at 10:00 a.m. Pacific time, a public hearing will be held before the Commissioner of Corporations of the State of California, or such Assistant Commissioner or Corporations Counsel as may be designated, at 71 Stevenson Street, Suite 2100, San Francisco, California 94105, upon the application of First Avenue Networks, Inc., a Delaware corporation ("**Acquiror**"), for a Permit authorizing the sale and issuance of its securities pursuant to an application filed July 13, 2006. For the convenience of shareholders outside of California, you may attend the hearing telephonically by dialing (866) 675-1577 and entering 31563447196# when asked for a participant code.

The purpose of the hearing is to enable the Commissioner to determine the fairness of the terms and conditions of the merger transaction described below (the "**Merger**"), pursuant to Section 25142 of the Corporate Securities Law of 1968. It is proposed that a wholly-owned subsidiary of Acquiror ("**Merger Sub**") be merged with and into FiberTower Corporation, a Delaware corporation (the "**Company**"). The Company provides backhaul services for several

wireless carriers, covering nine markets across the United States. Acquiror delivers wireless transport services to cellular carriers, service providers and government suppliers and agencies, and provides wireless backhaul and Carrier Ethernet services over its licenses spectrum footprint, which includes nationwide 24 GHz and 38 GHz holdings.

As a result of the Merger, the separate corporate existence of Merger Sub will terminate, and the Company will survive as a wholly-owned Subsidiary of Acquiror (the Company is sometimes referred to herein as the “**Surviving Corporation**”). Acquiror has requested authority to issue and sell shares of its Common Stock (“**Acquiror Common Stock**”) in connection with the Merger.

The Acquiror Common Stock is listed on The Nasdaq Global Market under the symbol “FRNS”.

#### **Merger Agreement and Plan of Reorganization**

Pursuant to the Merger, as set forth in the Agreement and Plan of Merger, dated as of May 14, 2006 by and among Acquiror, the Company and Merger Sub (the “**Agreement**”), Merger Sub will be merged with and into the Company in the manner and with the effect provided by applicable provisions of Delaware law, and the separate existence of Merger Sub shall terminate.

#### **Effect of the Merger on FiberTower Shareholders**

Each share of FiberTower Common Stock issued and outstanding immediately prior to the effective time of the Merger (other than any dissenting shares and any shares owned by FiberTower, First Avenue, Merger Sub or any other direct or indirect subsidiary of First Avenue) shall be cancelled and shall be converted automatically into the right to receive, in accordance with and subject to the terms of the Agreement, 0.3045470 of a share of Acquiror Common Stock, subject to adjustment in the case of any stock split, subdivision or similar event or upon certain option or warrant exercises as provided in the Agreement. Prior to the closing of the transactions contemplated by the Agreement, each outstanding share of FiberTower Preferred Stock shall have been converted into a share of FiberTower Common

Stock pursuant to the terms of FiberTower's Certificate of Incorporation. In addition, at the effective time of the Merger, all options outstanding at the effective time of the Merger to purchase FiberTower Common Stock, whether vested or unvested, shall be assumed by First Avenue in accordance with the terms of the Agreement.

### **Reasons for the Merger**

The Boards of Directors of each of Acquiror and the Company have determined that the Merger is in the best interests of Acquiror and the Company and their respective security holders in view of the current and planned business operations of Acquiror and the Company. In reaching its decision to approve the proposed Merger, the Board of Directors of Acquiror considered a variety of factors, including: (i) the future prospects of Acquiror on a standalone basis, and whether the Merger would provide potentially greater benefit to Acquiror and its stockholders; (ii) the current and historical financial condition and results of operations of Acquiror and other competitive access telecommunications carriers; (iii) increased competitive activity and the need to accelerate growth in order to grow revenues faster; (iv) the strategic objectives of Acquiror; (v) whether, given the company-specific and industry risks faced by Acquiror and trends in the industry in which it operates, Acquiror would have a better opportunity to achieve its objectives through a transaction with the Company; (vi) the customer pipeline of the combined company; (vii) the increased scale and scope of the combined company; (viii) the better opportunity for revenues across a broader geographic area that would result from the Merger; and (ix) the alternate strategic options available to Acquiror. In reaching its decision to approve the proposed Merger, the Board of Directors of the Company considered a number of factors, including: (i) the opportunity to benefit from the spectrum licenses held by Acquiror; (ii) the opportunity to benefit from Acquiror's presence in metropolitan areas to expand the markets the Company serves; (iii) the current value of Acquiror's common stock; (iv) representation of the Board of Directors of Acquiror after the merger; (v) the potential for increased liquidity for the Company's stockholders;

(vi) integration risks; (vii) competition; and (viii) alternatives such as an initial public offering or remaining as an independent company.

### **Dissenters' Rights**

If the Merger is approved by the requisite vote of the Company's shareholders, any holder of record of shares of the Company's capital stock who does not vote in favor of the Merger may dissent and elect to receive a payment in cash equal to the fair value of the shares of the Company's stock held by such holder in lieu of receiving shares of Acquiror Common Stock in the Merger, provided that such holder complies with the provisions of Section 262 of the Delaware General Corporation Law (the "**Delaware Code**"). The procedures that a shareholder must follow to properly assert his or her dissenter's rights with respect to his or her Company capital stock are highly technical in nature and must be strictly complied with. Accordingly, any shareholder of the Company who intends to exercise dissenter's rights should carefully review the text of the Delaware Code and consult his or her attorney and other professional advisors.

### **Certain U.S. Federal Income Tax Considerations**

Acquiror and the Company intend the Merger to qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "**Code**"). No ruling from the Internal Revenue Service has been, or will be, obtained regarding the tax consequences of the Merger. Accordingly, there is no assurance that the Internal Revenue Service will not challenge the qualification of the Merger as a reorganization under Section 368(a) of the Code. The Company shareholders are urged to consult their own tax advisor(s) as to the specific estate, gift, federal, state, local and foreign tax consequences to them of the Merger and their related reporting obligations in light of their particular circumstances. See "Summary—Material United States Federal Income Tax Treatment—" in the Consent Solicitation and Information Statement of the Company, which will be furnished to Company shareholders of record, for a discussion of the material United States federal income tax consequences of the Merger to the Company, its shareholders and the Acquiror.

**Further Information**

For further information concerning the Merger, reference is made to the application and all papers and documents filed in connection therewith at the San Francisco office of the Department of Corporations. The hearing will be predicated upon said application papers and documents.

Any interested persons, including, without limitation, the Company's shareholders, may be present at the hearing and may be, but need not be, represented by counsel, and will be given an opportunity to be heard. Each interested person will be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, and other things by applying to the Department of Corporations, 71 Stevenson Street, Suite 2100, San Francisco, California 94105, Attention: Steven S. Bronson, Senior Corporations Counsel (Specialist), if reasonably, properly and timely requested. If you are interested in said matter, you may appear at said hearing in favor of or in opposition to the granting of such permit.

If you are unable to attend, correspondence regarding the hearing may be directed to the Department of Corporations, 71 Stevenson Street, Suite 2100, San Francisco, California 94105, Attention: Steven S. Bronson, Senior Corporations Counsel (Specialist).

Dated: July 24, 2006

San Francisco, California

Preston DuFauchard  
California Corporations Commissioner

**ORIGINAL SIGNED BY**

By: Steven S. Bronson  
Title: Senior Corporations Counsel  
(Specialist)

## RESPONSE TO NOTICE OF HEARING

The undersigned acknowledges receipt of the Notice of Hearing to be held on August 15, 2006 at 10:00 a.m. Pacific Time before the Commissioner of Corporations of the State of California upon the application of First Avenue Networks, Inc., a Delaware corporation ("Acquiror"), for a Permit authorizing the issuance of securities in connection with the proposed merger of Marlin Acquisition Corporation, a Delaware corporation and wholly owned subsidiary of Acquiror, with and into FiberTower Corporation, a Delaware corporation (the "Hearing").

(Please check the appropriate response)

- ☐ I do not plan to attend the Hearing.
- ☐ I plan to attend the Hearing in person.
- ☐ I plan to attend the Hearing telephonically.
- ☐ I wish to attend the Hearing but did not have sufficient notice to make arrangements to do so.

*Please sign this Response to Notice of Hearing and return it to Ropes & Gray LLP, One Embarcadero Center, Suite 2200, San Francisco, CA 94111, Attn: Juliana Capata, Esq., or via facsimile at (415) 315-6350 on or before August 11, 2006. If you do not return this Response to Notice of Hearing on or before August 11, 2006, we will assume that you do NOT wish or plan to attend the Hearing.*

Please print the name(s) that  
appears on your stock certificate:

\_\_\_\_\_  
(Print name(s) on certificate)

Please sign your name:

\_\_\_\_\_  
(Authorized signature)

Date: \_\_\_\_\_, 2006